In the Matter of MILTON BRADLEY COMPANY *and* INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA (A. F. L.)

Case No. R-1377.—Decided October 6, 1939

Toy and Novelty Manufacturing Industry—Investigation of Representatives: petition for dismissed where no question concerning representation has arisen in a unit which is appropriate for the purposes of collective bargaining—*Unit Appropriate for Collective Bargaining:* unit sought in petition composed of printing pressmen, found not to be appropriate: divergent views of Board members: (1) (Smith, concurring) since there is no evidence of past history of collective bargaining on part of the pressmen, no justification for weakening the bargaining strength of employees as a whole by permitting craft unit to split off from the industrial unit; (2) (Leiserson, concurring) prior and existing contracts established an industrial unit, including pressmen, as appropriate; Board not authorized to split this unit; (3) (Madden, dissenting) where considerations determinative of appropriate unit are such that either of two contentions is valid, decisive factor is the desire of the employees involved.

Mr. Benjamin E. Gordon, for the Board.

Mr. Edward B. Cooley, and *Mr. Abe Diamond*, of Springfield, Mass., and *Mr. Lee Pressman*, of Washington, D. C., for Local 224.

Mr. Anthony J. De Andrade, of Boston, Mass., for the International.

Mr. Samuel Sandberg, of New York City, for the Novelty Workers.

Mr. Gilbert V. Rosenberg, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On March 21, 1939, International Printing Pressmen and Assistants Union of North America, affiliated with the American Federation of Labor,[1] herein called the International, filed with the Regional Director for the First Region (Boston, Massachusetts) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Milton Bradley Company, Spring-

[1] Incorrectly designated in the notice of hearing as International Printing Pressmen and Assistants Union of North America (A. F. L.).

field, Massachusetts, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 26, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 3, 1939, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the International, Milton Bradley Industrial Union, Local 224, chartered by International Union of Playthings and Novelty Workers of America, affiliated with the Congress of Industrial Organizations, herein called Local 224, a labor organization claiming to represent employees directly affected by the investigation, and International Union of Playthings and Novelty Workers of America, herein called the Novelty Workers. Pursuant to notice, a hearing was held on May 11, 1939, at Springfield, Massachusetts, before E. G. Smith, the Trial Examiner duly designated by the Board. The Board and Local 224 were represented by counsel, the International and the Novelty Workers by representatives; all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Pursuant to notice duly served on all the parties, a hearing was held before the Board in Washington, D. C., on June 23, 1939, for the purpose of oral argument. The International was represented by its representative and Local 224 by counsel, and both participated in the argument.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE COMPANY

Milton Bradley Company, a Massachusetts corporation, is engaged at its plant in Springfield, Massachusetts, in the manufacture of toys, games, novelties, and advertising materials. During the year 1938 the Company sold finished products valued at approximately $3,147,000, of which approximately 90 per cent were shipped from the Company's plant to destinations outside the State of Massachusetts.

During the same period, the Company purchased raw materials valued at approximately $644,977, of which approximately 83 per cent were shipped to the Company's plant from points outside the State of Massachusetts. The Company employs more than 370 persons.

II. THE ORGANIZATIONS INVOLVED

International Printing Pressmen and Assistants Union of North America is a labor organization affiliated with the American Federation of Labor, admitting to membership all persons employed in the printing-pressroom departments of all establishments in the United States or Canada.

Milton Bradley Industrial Union, Local 224, is a labor organization chartered by International Union of Playthings and Novelty Workers, affiliated with the Congress of Industrial Organizations, admitting to membership all employees of the Company except foremen and supervisors.

III. THE APPROPRIATE UNIT

The International alleges in its petition that all the pressmen, press assistants, job-press feeders, and lock-up men employed by the Company, herein sometimes collectively called the pressmen, constitute a unit appropriate for the purposes of collective bargaining. It asserts that 13 of the 15 employees in department 22 of the plant are properly included in such unit. Local 224 contends that all employees of the Company, excluding lithographers, supervisors, and clerks, constitute an appropriate unit. The Company expresses no preference concerning the appropriate unit.

For the reasons set forth in the separate opinions below, we find that the bargaining unit sought by the International is not appropriate for the purposes of collective bargaining.

IV. THE QUESTION CONCERNING REPRESENTATION

Since the bargaining unit sought to be established by the petition is inappropriate for the purposes of collective bargaining, we find that no question has been raised concerning the representation of employees in an appropriate bargaining unit.

On the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusion of Law

No question concerning the representation of employees of the Milton Bradley Company in a unit which is appropriate for the

purposes of collective bargaining has arisen within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusion of law, the National Labor Relations Board hereby orders that the petition for investigation and certification filed by International Printing Pressmen and Assistants Union of North America, be, and it hereby is, dismissed.

Separate concurring opinion of MR. EDWIN S. SMITH:

In June 1937, pursuant to the result of a consent election conducted by the Board among all the Company's employees, except lithographers,[2] supervisors and clerks, Local 224 [3] was recognized by the Company as the sole bargaining agent of all such employees, including the pressmen. Local 224 and the Company thereupon entered into a written exclusive bargaining contract for the remainder of 1937. Thereafter they entered into a parole exclusive bargaining contract for 1938. At the time of the hearing the Company and Local 224 were negotiating a new contract for the large unit, subject to the decision of the Board in this proceeding. Both contracts between Local 224 and the Company and the negotiations which were pending at the time of the hearing covered wages, hours, and working conditions of all employees of the Company except the lithographers.

Prior to March 1939 no attempt had been made by or on behalf of the pressmen to bargain separately. On March 10, 1939, the International requested the Company to recognize it as the exclusive bargaining agent of the employees in department 22. The Company refused to grant such recognition prior to certification by the Board.

The Company employs over 370 persons in 23 different departments, of which 14 are manufacturing departments and 9 are service centers. The employees are classified in approximately 275 different functional occupations. Working hours and base-pay rates are approximately the same in all the departments except the lithographing department. Approximately 20 operations are performed in printing department 22. Between 4 and 5 thousand different items go through some operation in that department, of which approximately 70 to 80 per cent are sent to, or received from, other departments for further processing.

[2] The lithographers were excluded from the unit by agreement between the Lithographers Union and Local 224 and did not participate in the election.

[3] At this time Local 224 was chartered by United Electrical and Radio Workers of America (C. I. O.). On April 12, 1939, it transferred its affiliation to International Union of Playthings and Novelty Workers of America (C. I. O.).

For the reasons stated in my dissenting opinion in *Matter of Allis-Chalmers Manufacturing Company*,[4] and in my concurring opinion in *Matter of American Can Company*,[5] I concur in the decision that a unit of pressmen is not appropriate in this case.

The separate opinion of Mr. Leiserson states that in the consent election, which included the employees of McLaughlin Bros., Inc., a subsidiary of the Company, an opportunity was given for the pressmen to vote as a separate unit; that the employees in department 22 of the Company were not included in the pressmen's unit but voted with the other factory employees; and that this arrangement indicates an agreement by the parties that the employees in department 22 should be "classified . . . as factory employees and not as printing press craftsmen." The full details of the consent election do not appear in the record. It is disclosed, however, that only the pressmen employed by McLaughlin Bros., Inc., voted as a separate unit. The "Notice of Election" referred to by Mr. Leiserson is not part of the record and it is very uncertain that the election was actually conducted in accordance with the Notice. In fact, at the oral argument before the Board, the attorney for the International stated that when he discovered it was proposed to vote the pressmen of both companies in the consent election as a separate unit he insisted that such a vote be taken only among the pressmen of McLaughlin Bros., Inc. The reason for thus varying the original plan (which was apparently embodied in the Notice of Election) was that at the time International had no members among the pressmen employed by the Company. It has never been disputed at any time that the employees here claimed by the International as constituting a separate unit are in fact pressmen and eligible to membership in the International. I interpret the opinion of Mr. Leiserson to mean, therefore, not that the employees in department 22 are not pressmen but that in the consent election these employees voted in a single unit with the other production employees.

I agree with the views expressed in the Chairman's dissenting opinion that there is no language in the statute which contemplates imprisoning the Board's findings as to unit within the framework of a pre-existing contract. Furthermore, I likewise agree with Chairman Madden that, although the existence of a previous contract should be an important factor in guiding the Board's decisions as to the appropriate unit, it is not necessarily conclusive.[5a]

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[4] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159, 175.

[5] *Matter of American Can Company* and *Engineers Local No. 30, et al.*, 13 N. L. R. B. 1252.

[5a] Compare my concurring opinion *Matter of American Can Company, supra.*

Separate concurring opinion of MR. WILLIAM M. LEISERSON:

On May 14, 1937, after a strike, an agreement was made by the Company (including also a subsidiary known as McLaughlin Bros., Inc.) with the representatives of its employees by which all parties stipulated that an election should be conducted by the Board in which the employees of all departments would be eligible to participate except those in the lithographing department. In this election three separate ballots were taken, the employees being divided into three separate bargaining units. The "Notice of Election" printed by the Board and signed by the Regional Director of the First Region read in part as follows:

ELIGIBILITY OF VOTERS

Those eligible to vote are the production and maintenance employees of the Milton Bradley Company and McLoughlin Bros., Inc. whose names are on the payroll list as of May 11, 1937 and who are not now permanently employed elsewhere.

. . . . . .

Printing Pressmen, Assistants and Feeders.

Persons eligible to vote employed in the above classifications will vote on a separate ballot containing the names of the C. I. O. Local 224 and the International Printing Pressmen and Assistants' Union of North America, A. F. of L.

Bookbindery Department.

Persons eligible to vote employed in the Bookbindery Department will vote on a separate ballot which will contain the names of the C. I. O. Local 224 and the International Brotherhood of Book Binders, A. F. of L.

All Other Employees Eligible to Vote.

All other employees eligible to vote will vote on a ballot containing the name of the C. I. O. Local 224 and a block marked YES and one marked NO in which they mark their choice.

The election notice also reproduced samples of the three separate ballots.

It is plain from this notice of election that the consent agreement provided that the printing pressmen, assistants, and feeders constitute an appropriate bargaining unit, and they voted accordingly. The International Printing Pressmen and Assistants' Union of North America receiving a majority of the votes in this unit, and it accordingly was designated as the exclusive representative of these employees. However, the employees in department 22 were not included in the unit with the printing pressmen but were classified and voted

with the third unit which included all the other factory employees. In this unit Local 224 was victorious.

On June 11, 1937, pursuant to the results of the election, the Company entered into a written agreement with Local 224, the first paragraph of which read as follows:

> *Recognition:* The Employer recognizes the above Union as the collective bargaining agency for factory employees to represent all factory employees, who are not members of the Lithograph Department, also excepting supervisors and clerks, with respect to wages, hours and similar conditions of employment.

This agreement remained in effect until December 31, 1937, when it was succeeded by another agreement containing the same recognition clause, and the terms of this agreement are still in effect. The employees of department 22 have been covered by these agreements as an integral part of the bargaining unit that includes the factory force.

On the basis of these facts, it seems clear that by voluntary agreement and by collective bargaining contracts the employees have themselves together with the Company classified the employees of department 22 as factory employees and not as printing-press craftsmen. Had they been considered such craftsmen they would have been eligible to vote the printing pressmen's ballot in the election. Under these circumstances I do not think that it is within the authority of the Board to split off the employees of department 22, to remove them from the contract by which they are covered, and to reclassify them in another bargaining unit with a separate and different contract. These employees have acquired rights and privileges under the working contracts that now govern their relations with the Company which the Board is not free to set aside or to ignore.

By assuming authority to alter bargaining units established and maintained by collective agreements the Board endangers all union contracts whether these are negotiated on a craft basis, a plant basis, industry basis, or on the basis of any other unit that the parties have found appropriate in bargaining collectively. Because craft unions rarely consist of one craft only but commonly are a combination of several skilled occupations together with helpers and other semi-skilled and unskilled workers, the assumption of authority by the Board in substituting its judgment as to the appropriateness of a unit for the customs and practices of collective bargaining as evidenced by contracts threatens with disruption craft unions as well as the unions that are organized on a so-called industrial or other basis.

The International Association of Machinists includes mechanics of various kinds and degrees of skill, as well as unskilled workers. The same is true of the Brotherhood of Electrical Workers, the Hotel

and Restaurant Workers' Union which includes cooks, waiters, bartenders, and dishwashers, the Amalgamated Meat Cutters and Butcher Workmen, the Amalgamated Association of Street and Electric Railway Employees, the United Garment Workers, the Brotherhood of Railway Clerks, and many others affiliated with the A. F. of L. The same is true also of the so-called industrial unions affiliated with the C. I. O. If the bargaining units maintained by these organizations in their contracts may be changed or split by the Board when it feels that other units are preferable, then the existence of these unions as well as their established contractual relationships with employers are at the mercy of the members of the Board. Every disgruntled occupational group within a craft or other unit might well demand and secure separate certification if the Board is not bound by the bargaining units established by contracts.

It is argued that this result does not necessarily follow and that nothing of the sort has in fact happened. The complaints of both C. I. O. and A. F. of L. unions seem to me to indicate that it has happened. But even assuming that it has not happened, if the Board may consider units established by contracts as "fortuitous" and if it is vested with authority to alter such established units when in its judgment this is necessary or desirable, then of course the Board may bring about a splitting or combining of established contractual craft units whenever it so desires. If the authority is lodged in the Board, as is contended, then the fact that it may not yet have been exercised makes it no less dangerous to labor organizations and their contracts with employers. I am of the opinion that Congress intended the Board to be bound by the bargaining units established and maintained by collective agreements.

Precisely this problem arose under the Railway Labor Act where the term "craft or class of employees" is used in the same sense as "appropriate bargaining unit" is used in the National Labor Relations Act. In neither Act are the terms defined. Under the Railway Act stationary engineers demanded separate representation from firemen and oilers with whom they were combined by contract in a single bargaining unit. Dining-car cooks wanted separate representation from waiters and other dining-car employees where contracts of the Hotel and Restaurant Workers' Union included all of them in a single unit, or craft or class. Freight handlers petitioned for separate representation where the Brotherhood of Railway Clerks had by contracts established the craft or class to include all clerical, office, station, and storehouse employees as a single bargaining unit. Yard conductors attempted to split themselves off from yard brakemen where the contracts included both in a single craft or class.

Because of the vital interests involved the courts have been called upon to review findings as to craft or class (or bargaining units) under the Railway Labor Act. In *Brotherhood of Railroad Trainmen* v. *National Mediation Board*[6] the United States Court of Appeals for the District of Columbia laid down the rule which is now being followed in determining representation disputes under that Act:

> The general purpose of the (Railway) Labor Act was to promote peaceful and conciliatory consideration of labor disputes and especially to secure the right of collective bargaining through a representative chosen by a majority of the employees in a particular craft or class. It is not going too far to say that the basic and underlying purpose of the Act was to insure representation in accordance with established custom to those employees whose interests are involved. But the Act leaves uncertain the precise or exact meaning of the words "class or craft", and we think obviously for the reason that it was intended by Congress to adopt the designation of class or craft as determined by the then current working agreement between the railroad and particular groups or classes of its employees. And we find justification for this conclusion in paragraph seven of Sec. 2, which provides that:
>
> No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class or embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.
>
> In other words, that no carrier shall change the terms of its working agreement with any class of employees, as that class is embodied in and declared to exist by the working agreement, except in accordance with the terms of the agreement or in conformity with the Act. In the light of this provision—and that of the general scheme of the Act as a whole—we think it is obvious that how classes are to be formed and who shall compose them are matters left to the employees themselves; and so we think that by reference to the terms of the working agreement which the employees have made, is to be found at least some evidence of who are members of the craft or class covered by that agreement. The Board also recognizes that this is a criterion, for in its First Annual Report to Congress, after noting that the Act does not give it authority to define the crafts or classes, it says: "So far as possible the Board has followed the past practice of the employees in grouping themselves for representation pur-

[6] 88 F. (2d) 757, decided Dec. 21, 1936.

poses and of the carriers in making agreements with such representatives."

Here we are clearly told that the precise meaning of the words "craft or class" being left uncertain, it was intended by Congress "to adopt the designation of class or craft as determined by the then current working agreement between the railroad and the particular groups or classes of its employees." The National Labor Relations Act leaves uncertain the precise meaning of the term "appropriate bargaining unit," I believe, for the same reason that "craft or class" is undefined in the Railway Act;—because Congress intended to adopt the designation "bargaining unit" as determined by the working agreements voluntarily made by the employees with their employers. Many cases come to the Board, of course, where no bargaining units have been established by collective bargaining agreements. In these cases it is clear that the appropriate units are those determined by the employees' own voluntary organization. Where no contract provides otherwise, every separately organized group is entitled to select or vote for representatives in a unit based on its own form of organization.

This rule is working successfully, and satisfactorily to all concerned, under the Railway Labor Act. I am of the opinion that the same rule is required to control the administration of the National Labor Relations Act, if the purposes of the Act are to be accomplished.

Although admitting that collective bargaining custom and practice as evidenced by working contracts must be considered by the Board in determining appropriate bargaining units, the majority of the Board contends that other factors must also be considered. In the *Pittsburgh Plate Glass Company* case[7] these other factors are enumerated. They include uniformity of wages, hours, and working conditions as well as manufacturing processes, the necessity of placing employees on a basis of equal bargaining strength with the employer and avoiding disharmony in the bargaining process, the continued insistence of legitimate labor organization on a particular form of bargaining unit, and the feasibility of a particular form of bargaining unit. In the present case the majority mentions also the history of collective bargaining throughout the industry as a whole, as well as the structure of the various labor organizations which admit to membership the employees, or some of the employees, in question.

It does not seem to me that these are objective criteria on the basis of which a determination of a bargaining unit can be made in ac-

[7] *Matter of Pittsburgh Plate Glass Co.* and *Federation of Flat Glass Workers of America, affiliated with the C. I. O.*, 15 N. L. R. B. 515.

cordance with the provisions of the National Labor Relations Act. Such factors do not provide a rule or principle which binds the members of the Board as well as the parties whose disputes are to be settled. They make the final determination a personal judgment instead of a rule of law. The listed factors are more in the nature of arguments that the protagonists of one form of structure and organization of labor unions may use as against those who favor other forms.

I do not think that it was intended by Congress when it adopted the Act that a government administrative board should decide in favor of one or another form of labor organization by weighing arguments or the factors indicated in order to determine the form that is best for collective bargaining. It seems plain to me that the intent of the Act was to keep the Government out of any such controversies and to leave the employees free to organize on a craft, industrial, plant, or other basis as they deem best, without any interference from their employers. Only by considering itself bound by the bargaining units established and maintained by collective bargaining contracts can an administrative board keep itself from taking sides in jurisdictional controversies among labor organizations which differ as to the most effective form of organization for collective bargaining purposes.

In view of these considerations I am of the opinion that the Board is constrained by the existing contract covering factory employees to dismiss the petition in the present case.

Separate dissenting opinion of CHAIRMAN MADDEN:

I am of the opinion that the pressmen should be given the opportunity to determine by a secret ballot whether they wish to bargain collectively through the International Printing Pressmen's Union as a separate unit, or whether they wish to merge with the other employees in an industrial unit. My reasons for this conclusion are the same as those expressed in my dissenting opinion in *Matter of American Can Company*.[8]

I further do not agree with the reasoning of my colleague that the Board is not authorized to find a unit different from that which the parties in collective bargaining have considered to be appropriate and which they have embodied in a contract.[9] I believe that the past

[8] 13 N. L. R. B. 1252.

[9] The opinion of Mr. Leiserson states that "the terms" of the 1938 contract "are still in effect," and that, "Under these circumstances I do not think that it is within the authority of the Board to split off the employees of department 22, *to remove them from the contract by which they are covered*, and to reclassify them in another bargaining unit with a separate and different contract. These employees have acquired rights and privileges under the working contracts *that now govern their relations with the Company* which the Board is not free to set aside or to ignore." Elsewhere the opinion concludes that "the Board is constrained *by the existing contract* covering factory employes to dismiss the petition in the present case." The record seems clear, however, that both the 1937 and the 1938 contracts have expired and that at the time of the hearing no contract covering the factory employees or including the employees of department 22 was in existence.

history of collective bargaining in a plant, as evidenced by collective bargaining agreements, is a factor entitled to great weight in the determination of the appropriate bargaining unit. But I do not believe that a prior exclusive bargaining contract is, by itself, decisive of the issue. As I have previously had occasion to point out, the form which a collective agreement takes normally depends upon a variety of fortuitous circumstances, differing from plant to plant.[10] It cannot be said by any means to represent invariably the most effective unit for collective bargaining or the unit that is fairest to the conflicting interests involved. Other important factors cannot be ignored. These include, for instance, the history of collective bargaining throughout the industry as a whole as well as the structure of various labor organizations which admit to membership the employees, or some of the employees, in question.

Furthermore, while an exclusive bargaining contract may represent the agreement of employers and employees at the time it is executed, clearly it does not necessarily represent that such agreement will continue forever. If we are to be guided solely by the terms of previous contracts, however, it is in practical effect impossible, after a contract has once been made with an industrial union, for craft groups of employees ever to obtain craft units except by first destroying the industrial union. Thus unions which may have organized on the basis of craft units in other plants for many years are effectively excluded forever from the plant. And, indeed, a craft union may have bargained for many years for a craft unit, but if at one election or in one contract the workmen in the unit amalgamate themselves with a larger industrial unit, it becomes perpetually impossible for them ever to resume their former form of organization.

Again, an exclusive bargaining contract may not necessarily represent the agreement of employer and employees even at the time it is executed. It may be and often is an expedient, a compromise, a gentleman's agreement between two contesting groups to seem to amalgamate in order to present a united bargaining front to the employer, while really giving separate representation to the two groups. These arrangements, often used to settle troublesome industrial controversies, are made unsafe by the doctrine of the concurring opinion. I doubt whether unions will resort to these desirable settlements, regarded by them as experimental and tentative, if the Board treats them as final and perpetual determinations of the form of the bargaining unit.

I further cannot agree that a reservation of the right of the Board to find a different unit than that embodied in an exclusive bargaining

[10] *Matter of American Can Company* and *Engineers Local No. 80, et al.*, 13 N. L. R. B. 1252; *Matter of Clyde Mallory Lines* and *Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22*, 15 N. L. R. B. 1008.

contract "threatens with disruption craft unions as well as the unions that are organized on a so-called industrial or other basis." The argument seems to be based on the contention that a failure to follow the unit established by a previous contract involves a willingness to create a separate unit out of every subordinate group which wishes to break away. This result does not follow and nothing of the sort has in fact happened in actual practice. Indeed, the Board has consistently held that it would not find appropriate a subordinate part or fragment of the group which has conventionally bargained on a craft basis.[11] It is true that the application of the *Globe* doctrine may result in a portion of an idustrial unit being separated from the main group. But this result follows only when the majority of a group that has conventionally bargained as a craft are in favor of the separation and the alternative is to deny a craft union of many years' standing, such as the Printing Pressmen's Union in the instant case, the right to organize in the particular plant at all.

The argument is based largely upon experience under the Railway Labor Act. The problems arising under the Railway Labor Act, however, are far different from those with which the Board is confronted. The Railway Labor Act applies to a single industry in which collective bargaining through collective agreements is well established and relatively stable. Under such conditions it is feasible to rely more on what the parties have over a number of years worked out in the form of collective agreements. In industry as a whole, over which this Board has jurisdiction, we are faced with no such relatively simple situation. Many industries are unorganized, others are just being organized, and others have been organized for a comparatively short period of time. There is no uniformity of conditions and frequently no substantial history of collective bargaining.

It is stated that the National Mediation Board has in railway cases refused to permit stationary engineers to separate themselves from firemen and oilers, dining-car cooks from waiters, freight handlers from other station employees, and yard conductors from yard brakemen. It was thus, I should suppose, determining bargaining units which were in accord with the conventional methods of organization of railway employees by standard labor organizations. In the instant case the Printing Pressmen's Union asks to be permitted to do what it has done with thousands of other employers; to be permitted to bargain for the pressmen. I do not see why it should follow that

[11] *Matter of Novelty Steam Boiler Works* and *Local 101, Welders, Burners, Apprentices, A. F. of L.*, 7 N. L. R. B. 969; *Matter of Rembrandt Lamp Corporation* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 6, Chicago, Illinois, Affiliated with The American Federation of Labor*, 13 N. L. R. B. 945; *Matter of Climax Machinery* and *Metal Polishers, Buffers, Platers and Helpers, Local Union No. 171, affiliated with the A. F. of L.*, 14 N. L. R. B. 252.

because the National Mediation Board does not permit the formation of new and unusual units, this Board must not tolerate the formation of old and conventional units, units just like thousands of others which the world outside the Board knows familiarly.

Reference is made to the decision of the United States Court of Appeals for the District of Columbia in *Brotherhood of Railway Trainmen* v. *National Mediation Board*.[12] The meaning of Judge Groner's opinion in that case is not entirely clear. Although at one point he states that Congress intended to adopt the designation of class or craft "as determined by the then current working agreement," subsequently he adds that "by reference to the terms of the working agreement which the employees have made, is to be found at least some evidence of who are members of the craft or class covered by that agreement." Furthermore, the expression of opinion of Judge Groner is purely *dictum*. The actual holding in the case was that the National Mediation Board had arbitrarily refused to grant the parties to the dispute a "real hearing" and the case was remanded to the Board for such a hearing.

Finally, I see nothing whatever in the National Labor Relations Act which indicates an intention of Congress that the Board, in determining the appropriate unit, is governed solely by the terms of a previous exclusive bargaining contract. It would have been comparatively easy for Congress to have expressly included in Section 9 (b) a provision to the effect that the Board should be bound by previous agreements even though those agreements had expired. Congress did not do this, however, but left the matter in the discretion of the Board. Nor is there anything in the legislative history of the Act which indicates an intention by Congress that the Board be bound by the terms of previous collective agreements. On the contrary, the report of the Senate Committee on Education and Labor, submitted when the bill was reported out to the Senate, states as follows:

> Section 9 (b) empowers the National Labor Relations Board to decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit. Obviously, there can be no choice of representatives and no bargaining unless units for such purposes are first determined. And employees themselves cannot choose these units, because the units must be determined before it can be known what employees are eligible to participate in a choice of any kind.

[12] 88 F. (2d) 757.

The dogma "Once an industrial unit, always an industrial unit" [18] is so important and involves so great an assumption as to the stability of human affairs in a field which is far from stable, that it ought to be promulgated by Congress if it is promulgated at all. But, as I have said, I see no evidence that Congress intended any such dogma.

For the foregoing reasons I cannot agree that the Board is required to find that the appropriate bargaining unit is fixed by a previous exclusive bargaining contract, or that as a matter of policy it should do so in all cases.

[18] The correlative statement is, as we seem to agree, "Once a craft unit, change it if you will at the next bargaining period."